

June 15 2010

Ed Smith

CLERK OF THE SUPREME COURT
STATE OF MONTANANew EvidenceIn The Montana State Supreme CourtMichael Dasmor

Plaintiff

✓

State of Montana, D.C.,
Corrections Corp of America
Respondant

Petition for Writ of Habeas

corpus relief due to

Constitutional Violations by

State of Montana

FILED

Case No. Pending - JUN 15 2010

May 11. 2010

Ed Smith

CLERK OF THE SUPREME COURT
STATE OF MONTANA

Comes now the plaintiff claiming the State of Montana Eleventh Dist. court and the Montana Supreme Court have violated several constitutional issues both Federal and State which in turn violates my civil rights and has violated those rights since Oct. 30. 2001 to the present unlawful charges, conviction, sentencing and imprisonment.

Mike McGrath, stated Publicly: "My oath is to the Constitution. Constitutions trump State laws when the two conflict." Apparently Chief Justice McGrath has forgot those words (see denial of Constitutional issues Art II sec 31 [which is supported by Art. III, 1, 16, 17, 26 and 28 which I'm not allowed to bring into court or request of hearing] in Court Order of OP-09-662).

To begin. I was Sentenced in 1991 for 2nd degree Child Molesting (I touched a 13 yr. old's breast while applying sun burn lotion) in Washington State and Sentenced to time served (6 mo.), three years probation and sex offender treatment. These were all completed timely and successfully.

I WAS DISCHARGED ON THE 8TH DAY OF AUGUST, 1994 WITH ALL "CIVIL RIGHTS RESTORED," AND NO REGISTRATION REQUIREMENTS. See the Discharge attached to Montana Supreme Court files OP-09-571 and OP-09-648 (These are now on Appeal in the 9th Circuit Court of Appeals 09-36022). To Support my Claims that the Registration required by Montana was/is illegal in Oct. 2001 as it is today in my case and conviction I offer This New Guidance.

- 1) United States Constitution (Trumps Montana Constitution), ART. IV, Sec. 1, "Full faith and credit shall be given in each State to the public acts, records and judicial Proceedings of every other State." Montana must give me credit for, WASHINGTON restoring all my civil rights on August, 8, 1994.
- 2) Again(1) Art II Sec. 31 Montana Const, "NO Ex post facto Shall be enacted (Applies to Title 46, Chapter 23, Part 5 of The M.C.A's) applies to Contracts".
- 3) State v. Norton, 2001 MT 100; 305 Mont. 212, 25 P3d 886. "A plea agreement is subject to Contract law Analysis" (No ex post facto, Refer to No. 2 Above then Refer to No. 1 above).
- 4) Montana Constitution, Art. II Sec 28. "No longer being

Under a States Supervision all rights are restored." As Stated On My "Certificate and order of Discharge", - It is further Ordered that the defendant be discharged from the Confinement and Supervision of the Secretary of the Department of Corrections". Dated the 8th Day of August, 1994, All RIGHTS RESTORED(!!!).
Washington State Discharge.

- ⑤ Beck vs U.S., 84 SC. 480, withdraw of Guilty plea.
- ⑥ 92 K 67, "laws must conform to Constitutions".
- ⑦ U.S V. Wise, 391 F3d 1027, withdraw of Guilty plea.
- ⑧ 110 K 273 "Guilty plea open to Challenge when ANYTHING taints the plea."
- ⑨ Reaves V. U.S., 523 F Supp 1355, "A defendant claiming manifest deprivation of rights due to denial of withdraw of Guilty plea stands with greater rights than claiming manifest injustice due to deprivations of due process of law guarantee by the 14th Amendment."
Noticing: This court mentions the "Gillham order"! I was not represented by counsel, and my Retained counsel, falls, ~~was~~ was again Sided with the prosecution. My only choice to protect my civil rights was to plead the 5th Amendment through the illegal, unlawfull, shoddy of a hearing to cover the corrupt actions. Supported by the Matua State Supreme Court was to further expand on item no. 9. "Tainting" in the Matua State Supreme Court G.D.C file NO. 08-206 letter/response from ATT. ED falla, page 5. Clearly Shows ED Falla

"ON EACH occasion... he (I) to take the case to trial... He (I) would spend most if not all his life behind bars". Obviously to any normal person this would be considered as coercion (is not threatening) and that I clearly wanted to go to trial(1) yet that would have shown the corruption and railroading the State and my retained counsel were perpetuating now Supported by the Montana State Supreme Court.

Next item. A Report filed by "Flathead County CASA" GAI is/states the opposit of that letter to the O.D.C from ED falla. CASA file NO. DN 06-064C filed Nov. 15, 2006. Page 5. Clearly States in the 4th paragraph that "They (The siblings) blame their uncle Steve", also that the Alleged "incest" Victim Charged his story to them three different times." IN other words the Victim lied to his own sisters three times about what Allegedly happened.

This Montana Supreme Court also erringly, Repeatedly that their were two counts of incest, even fallas letter States One the court records Show One Charge every time this courts orders state two its liable and Shame: "two counts incest Step Son and Step daughter" (OP-10-662) And they were not Stepchildren if there was even such a act of incest, Stepchild is a legal term and that child must be adopted or have a legal Name Change, so the Courts Statements are untrue and the Courts Justices can be held liable for such Criminal

accusations. CASA Report - "He (alleged Victim[!]) T.C) says that he doesn't believe that any of his siblings have been sexually abused by Michael (me) and has never worried that they have." Same page: Both girls (siblings) feel they have never been inappropriately approached by Michael (me) in any sexual manner".

I don't know where this Supreme court gets its facts or learned law but it's clear it does no investigation of its own, takes the word of liars, makes false accusations, slanders my name and commits liable to falsify the record and taint any other courts investigation/interpretation of the facts to support the corruption, unknown full actions of the Dist. court it rules over. It should also be clear that if in fact there were two incests and a court chose to ignore them for a "failure to Register" charge would actually be criminal on the states part. Especially since there are no restrictions of any kind from any children (including the alleged victim) or any psycho/sexual evaluation requested in the sentencing order. This was clearly a ploy to cover the illegal registration back in 2001 since I was in court to be removed from the illegal registration requirement. (Im sure the higher courts outside MT borders will find this interesting).

To continue. A letter dated 1-2-09 from Dept. of Public Health and Human Services of Kalispell. Signed by Diane Piorozek CPSS. States "We closed a case

ON your family in Sept. 2007, it appears that the case involving Jodie and your children was opened Sept. 2006. This case was ~~almost~~ dismissed in court April 2007. I was not sentenced until June 2007. I did not know the west case had been dismissed. If I had I Surley would not have taken the plea agreement my Attorney orchestrated on behalf of the County ATT. The same incest charge I wanted to take to trial but "could spend the rest of my life behind bars" was dismissed without even a hearing I know of.

Finally. All Item's articulated above are available to any "Justice" seeking the truth and who wishes to follow their oath of office, the Constitutions which all dist. court, MT Supreme Court and yes U.S Dist. Court (Missouri) have violated while "acting under color of law" - when any Judge violates his oath of office to the Constitutions and violates the Constitutions, he no longer represents the Constitutions but is a "minister" of his own bias, prejudices and discriminations and no longer protected by judicial immunity but acting as a person and therefore liable for his actions as an individual.

In Closing, I offer as Exhibit A, a Note from a ATT, AT Law known to you all and respected by all Court Justices. Ron Waterman, dated August 7, 2009. For the record the Note is very clear and clearly

I would not be imprisoned if the Constitutions had
Chose the present Chief Justice of Montana.

I'm also for the record requesting this Montana Supreme
Court to Revisit the filed Declaratory Judgement
this Court Ordred/reld on already, in that request
it compared Morrison v Yellowstone County and
Dunsmore v State of Montana and the equal protections
of the law/constitutions. Case ID. OP 10-90.

This Court in its order OP-10-662 brought up/cited
Art. I sec 10, But as typical misrepresented it, in fact
Art 1, Sec 9 and 10 of the U.S Constitution both prohibit
ex post facto law where by the U.S Constitution and
State of Montana Constitutions trumps all legislative
acts and bars all enactments of ex post facto law.

Prayer for Relief.

The immediate release of this plaintiff from D.O.C
Custody and the conviction overturned in this Matter
DC-06-428 and DC-06-401 and both be dismissed with
prejudice the immediate expungement of those charges,
conviction, sentencing of this U.S citizen whose
Constitutional and civil rights have been violated by
all courts who have ruled against the constitutions
and their governing laws.


Michael Dunsmore

Certificate of Certification/Verification.

This is to certify that the foregoing is true and accurate to the best of my knowledge.

Certificate of Compliance.

This document complies with M.R. App P to the best of my current ability.

Certificate of Service.

This is to certify that a true and correct copy has been sent by U.S. First Class, pre-paid mail to the following-

Clerk of Mont. State Supreme Court.

Att. General of Montana.

Signed and dated this 11th day of May 2010

Signed under penalty of perjury 28 USCA 1746.

2010
Michael J. Durocher

App 7

GOUGH
SHANAHAN
JOHNSON
& WATERMAN
ATTORNEYS AT LAW PLLP

August 7, 2009

LEGAL CORRESPONDENCE

Michael Dunsmore, AO39245
50 Crossroads Drive
Shelby, MT 59474

Re: White, et. al./Martz, et. al.
GSJ&W File No.: 10027-001.17(HHH)

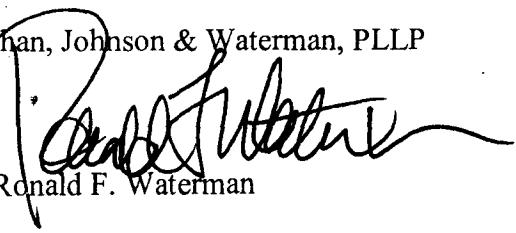
Dear Mr. Dussmore:

I am in receipt of a copy of a letter which you indicate was sent to our office on June 25, 2009. I did not receive this letter prior to August 4, 2009 when a copy of the letter was sent to my office.

In light of the fact that you were apparently sentenced on [REDACTED] to five years for not registering as an offender who needed to register, and given that you had counsel from the sentencing, I would encourage you to pursue an appeal to determine whether the fact that you were not required to register in Washington, the state where the offense apparently occurred and where you had completely discharged from your sentence, means that Montana could not require you to register and then charge you with a failure to register. I cannot further comment without seeing all of the file in this case, but from what you represent as correct, it would seem that this is an issue which should be pursued since it does seem that, under the facts as you present them, there may have been an error in charging you with this crime.

June 23, 2009
Very truly yours,

Gough, Shanahan, Johnson & Waterman, PLLP


Ronald F. Waterman

Michael Dunsmore
50 Crossroads Dr
Shelby MT. 59474
AO 39245

To The Supreme Court of Montana

Michael Dunsmore
Petitioner

Exception to order
of court's ruling.

V.
Eleventh Judicial Dist. Court,
Respondent.

Case No. 09-622.

This indigent, forced "pro-se" petitioner takes exception to this Supreme Courts "Order" dated January 26, 2010.

That court's "order" failed to address several facts which the petitioner will now address in numerical order.

Page 1, "Dunsmore was convicted of Child Molesting in Washington State in 1991". This Court failed to state Dunsmore (I) discharged that "Plea Contract" in September 1994 with no further obligation to Register in Washington State nor any other State and with all civil rights restored. So in fact this court failed to acknowledge that fact, this court also then violated Article II Sec 28 "Upon release from State Supervision, all rights are restored." and, Comity, "One State must respect a Sister States laws and rulings." Dunsmore was charged with... Stepson and Stepdaughters". First Neither were ever adopted by me so in fact lawfully not "Step" anything. Next, I was charged with only ONE count against T.C., OR'd the same day and never interviewed by any officer of the court on that allegation. "Based upon a Plea agreement... incest charges." As Counsel F.D Falla wrote the "Office of Disciplinary Counsel" "I gladly concur in his general allegation that

I told him (me) on each occasion (more than once) that it was my firm belief that were he (me) to take the case to trial he would in fact be convicted and that in all likelihood he would be sentenced to terms of incarceration at the Montana State prison which might well result in his spending most if not the entirety of his remaining life behind bars. I gave this consistent opinion as often as I did based upon Moway factors". Ref: ODC file # 08-206 In other words I wanted to go to trial but my Counsel fought me the whole way and then with his constant opinion coerced me into signing the plea agreement also stating I'd be out on my first parole hearing.

Next Page 2. "The Dist. Court issued an... without allowing Dunsmore to respond." That court as well as this court now are in violation of the ruling of Noil v Carlson, 809 f2d 1446 (9th Cir. 1987) in which both court are/have refused to let Dunsmore respond and this court did not address that issue or rule on the Dist. Courts action in this matter (Noil). "Montana appellate system... unlawful prosecution and imprisonment." This court is pointededly misrepresenting/convoluting the record. I claimed Judge Lymans' procedural errors allowed unlawful prosecution and imprisonment since I was not required to register in Washington State and all my "civil rights had been restored," as if the crime never took place."

"In State V. Mount... And that it applies retroactively. All well and good, but this court still did not address the fact that "Ex post facto" cannot be applied to "contracts" (Hicks) and as concluded by the

US Supreme Court and Montana Legislature. Plea agreements are contracts, NO ex post facto can be applied to contracts, Art. II Sec 31 Montana Const. "Dudsmore committed his offences in 2006..." Non registerable offences!!! "Dudsmore May have filed... Sec. 46-16-105 (2) M.C.A" I filed under "Newly discovered evidence", that I was grossly misinformed/misked by my Counsel as to the laws relevant to my case matter. Certainly it was an exercise of due diligence to rely on counsels advise.

This Court purposely overlooked the case of Morrison v State DV. 09-19 and its contents brought to this court in my Mandamus. That case and Noll both bring extreme light on this courts overt conduct as well as the unlawful conduct of the Dist. Court Judge, both of which can be held civilly liable under EGGAR V. City of Livingston, 40 F3d 312 (CA 9th Cir, 1994) "State Judges do not enjoy judicial immunity from unconstitutional behavior when facts are sufficient to grant party declaratory or injunctive relief against judges" 42 U.S.C.A § 1983. So in fact this court must now ask itself, were Judge Lymans' and this courts actions within the duties and scope of those offices?

As a Matter of record I'm requesting this court to Rafference the following documents for this courts review.

- 1) ODC file 08-206, Letter from Eduardo Faller Dated NOV. 7 2008. Shows full "life imprisoned" statement also shows one alleged victim not two.
- 2) Case No. DC-06-401 Clearly State charge of incest again only One.
- 3) States intention - DC-06-401 Dated Dec. 13, 2006 clearly State on lines 21-22 "Abuse of T.C.

4) CASA Report Dated Nov. 15 2006. All, pay
Special note to page 5 paragraphs 1 and 4.
Supportive case cites.

- 1) Pullman v. Allen, 446 U.S 522, 541-42 104 S.Ct 1970, 1980-81, 80 LEd, 2d 565 (1981)
- 2) Mowell v. Social Services of New York City 98 S.Ct 2018
(also states declaratory, injunctive or mandatory relief against judges)
- 3) Hafer v. Melts, "officers are persons"
- 4) Crawford - 61 v. Britton, "officers are persons"
- 5) Brookfield Construction v. Stuart; officers who violate their oaths of office no longer represent the government and can be sued as individuals.
- 6) M.C.A 45-5-204 "any Civil rights violation is a crime"

7) Goldman v. O.J. Simpson.

In Closing. This petitioner files this "exception" and lawfully expects this court to actually address the issues presented and it clear oversites in its next order in this matter.

Special Note: who ever presented the distorted facts (lies) to this court from the Dist. Court should be without a Job by the end of this week If this court cared about Judicial Integrity as much as it should instead of advocating the continued corruption in that lower court.

Respectfully,
Michael Durkach

Certificate of Verification

This is to verify that all statements here in are True and accurate (and provable) to the best of the petitioners knowledge -

Certificate of Compliance

This is to verify that this document conforms to M.R.App.P. to the best of his ability at this time.

Certificate of Service

This is to certify that a true and correct copy of the foregoing has been sent by first class U.S mail postage pre paid to the following.

Clark of Montana State Supreme Court.

Dated and Signed this 1st day of February 2010

Meals

NO Notary available.
(She took another job).

To the Montana State Supreme Court

Michael Dunsmore
50 Crossroads Dr
Shelby MT 59174
AO 39245

R.G Request for
Informal papers and
Motion for Counsel
in this Criminal
Habeas petition.

The petition is innocent as evident in this
financial statement and has no equity of
any kind and no outside assistance
from any source.

Signed and dated this 11th Day of May,
2010 and Signed under penalty of
perjury in accordance with 28 U.S.C.A.
1746.


Michael Dunsmore